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Attorneys for Plaintiff  
 Service Employees International Union, Local 790

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL  
 UNION, LOCAL 790

No.

007-02766

JL

Plaintiff,

v.

JOSEPH P. NORELLI, Individually, and in his  
 capacity as Regional Director, NATIONAL  
 LABOR RELATIONS BOARD, REGION 20;  
 ROBERT J. BATTISTA, Individually and in  
 his Capacity as Chairman and Member of the  
 NATIONAL LABOR RELATIONS BOARD;  
 PETER N. KIRSANOW, Individually, and in  
 his Capacity as a Member, NATIONAL  
 LABOR RELATIONS BOARD; DENNIS P.  
 WALSH, Individually, and in his Capacity as a  
 Member, NATIONAL LABOR RELATIONS  
 BOARD; WILMA B. LIEBMAN, Individually,  
 and in her Capacity as a Member of the  
 NATIONAL LABOR RELATIONS BOARD;  
 PETER CARY SHAUMBER, Individually, and  
 in his Capacity as a Member, NATIONAL  
 LABOR RELATIONS BOARD,

MOTION FOR PRELIMINARY  
 INJUNCTION

Date:

Time:

Judge:

Defendants.

To DEFENDANTS JOSEPH P. NORELLI, Regional Director, NATIONAL LABOR  
 RELATIONS BOARD (hereinafter "NLRB"), REGION 20; ROBERT J. BATTISTA, Chairman  
 and Member of the NLRB; PETER N. KIRSANOW, Member of the NLRB; DENNIS P. WALSH,

1 Member of the NLRB; WILMA B. LIEBMAN, Member of the NLRB; PETER CARY  
 2 SHAUMBER, Member of the NLRB, and their attorney(s), NOTICE IS HEREBY GIVEN that, on  
 3 the date and time, and at the location, noticed by the above-entitled Court in its Order to Show  
 4 Cause Why Preliminary Injunction Should Not Issue, PLAINTIFF SERVICE EMPLOYEES  
 5 INTERNATIONAL UNION, LOCAL 790 (hereinafter "Local 790" or "Union") will move the  
 6 Court for a Preliminary Injunction under Fed. R. Civ. P. 65 restraining and enjoining you, your  
 7 officers, agents, servants, employees and attorneys, and all those in active concert or participation  
 8 with you from: conducting a de-authorization election pursuant to the Decision and Order of the  
 9 NLRB, dated March 20, 2007, in NLRB Case No. 20-UD-445, reported as *Covenant Aviation*  
 10 *Security, LLC and Stephen J. Burke, Petitioner and SEIU Local 790*, 349 NLRB No. 67  
 11 (hereinafter "NLRB Decision and Order").

12 The grounds for Plaintiff's motion are that the Defendants, by issuing and taking steps to  
 13 implement the NLRB Decision and Order, violated a clear statutory prohibition, set forth at  
 14 National Labor Relations Act § 9(e)(1), 29 U.S.C. § 159(e)(1), which precludes an election based  
 15 on a petition to de-authorize a Union security clause, except where such petition is supported by  
 16 signatures of 30 percent or more of the members of a collective bargaining unit who are, at the  
 17 time the signatures are gathered and at the time the petition is filed, covered by a collective  
 18 bargaining agreement containing a Union security clause.

19 Here, it is undisputed that the petition at issue was filed on January 11, 2006, before any  
 20 collective bargaining agreement between the Union and Covenant Aviation, LLC ("Covenant"),  
 21 went into effect upon its execution by Covenant on January 13, 2006. The petition was, therefore,  
 22 filed prematurely. It is also undisputed that nearly 70% of the signatures submitted in support of  
 23 the de-authorization petition were dated in October 2005 and were thus collected over a month  
 24 before contract negotiations had begun and two or more months prior to disclosure of the terms of  
 25 the proposed contract to affected employees for a ratification vote. It is further undisputed that  
 26 approximately 92% of the signatures submitted in support of the de-authorization petition predated  
 27 the ratification vote, and every signature offered in support of the petition predated the execution of  
 28 the contract on January 13, 2006.

1 The plain text of NLRA § 9(e), cases construing its text, and the legislative history of the  
 2 provision make clear that § 9(e) prohibits prospective or preemptory use of the de-authorization  
 3 petition process as was improperly approved by the Defendants in this case.

4 An original suit in equity under the general jurisdiction of the above-entitled Court under  
 5 28 U.S.C. § 1337(a), is proper where, as here, the Decision and Order of the NLRB violated a clear  
 6 statutory prohibition and was, therefore, in excess of the Board's jurisdiction, to the harm of the  
 7 Plaintiff, and there is no adequate means by which to obtain judicial review of the Board's action.  
 8 (See *National Association of Agriculture Employees v. Federal Labor Relations Authority*, 473  
 9 F.3d 983, 988, fn 5 (9<sup>th</sup> Cir. 2007); *Bays v. Miller*, 524 F.2d 631 (9<sup>th</sup> Cir. 1975); *Leedom v. Kyne*,  
 10 358 U.S. 184 (1958).)

11 Plaintiff will suffer irreparable harm if the Court does not enjoin further action by  
 12 Defendants because Plaintiff has no other remedy at law and, if an election based on the de-  
 13 authorization petition is allowed to take place, contrary to law, will face violation of its rights  
 14 under the NLRA, substantial costs and extreme administrative and organizational burdens  
 15 associated with campaigning against the unlawful de-authorization proposal, disruption of its  
 16 members' workplace resulting from the competing campaigns and controversy surrounding the  
 17 conducting of an unlawful election, and will unjustifiably and unlawfully face potential jeopardy to  
 18 its ability to fulfill its functions as hundreds of employees' chosen collective bargaining  
 19 representative.

20 Plaintiff's motion is based on this Notice, the Verified Complaint for Declaratory and  
 21 Injunctive Relief and exhibits attached thereto filed concurrently herewith, the supporting  
 22 Memorandum of Points and Authorities filed concurrently herewith, the Declaration of Jamie  
 23 Thompson filed concurrently herewith, and the Declaration of David A. Rosenfeld filed  
 24 concurrently herewith and such other oral or written materials as the Court deems just and proper.

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1 Dated: May 25, 2007

2 WEINBERG, ROGER & ROSENFELD  
3 A Professional Corporation  
4 Vincent A. Harrington, Jr.  
5 David A. Rosenfeld  
6 Eric M. Borgerson

7 By: 

VINCENT A. HARRINGTON, JR.  
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Service Employees International Union, Local 790

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